THE HONOURABLE SRI JUSTICE

B.SESHASAYANA REDDY

WRIT PETITION NOS.9787 OF 2005 AND BATCH

DISPOSED OF ON 23-01-2006.

BETWEEN:

M/S. Sai Jyothi (Indane) Gas Agency

(IOC Dealer), rep. By its

Propritrix B.S.Bhagyarekha .. petitioner

And

THE UNION OF INDIA, rep.

By its Secretary to the Govt.,

Department of Petroleum &

Natural Gas, Central Secretariat,

NEW DELHI and others. .. respondents

THE HONOURABLE SRI JUSTICE

B.SESHASAYANA REDDY

Writ Petition Nos. 9787, 9791, 9792, 9812, 10326, 10327, 10334, 10338, 13683, 1599, 16002, 16646, 16860, 10708, 17388, 14202, 17204, 17194,

18690 of 2005

COMMON ORDER:

1. Since common questions of facts and law are involved in these batch of writ petitions, they were heard together and are being disposed of by this common order.

2. The dispute in these batch of writ petitions is between established distributors and newly commissioned distributors of Liquified Petroleum Gas (hereinafter referred to as LPG).

3. W.P.No.14202 of 2005 is filed by the Association of Established LPG dealers called A.P.L.P.G. Dealers Association represented by its President P.Venkateswar Rao. W.P.Nos.17204, 17194, 18690 of 2005 are filed by the established distributors individually. W.P.Nos.9787, 9791, 9792, 9812, 10326, 10327, 10334, 10338, 13683, 1599, 16002, 16646, 16860, 10708 and 17388 of 2005 are filed by the newly commissioned distributors of LPG. In order to avoid repetition of facts it would suffice to refer the pleadings of the parties in the writ petition filed by the Association of Established LPG distributors/ dealers.

4. The petitioner is Association of Distributors of LPG. M/s Hindustan Petroleum Corporation Limited- 2nd respondent, Indian Oil Corporation- 3rd respondent and M/s. Bharat Petroleum Corporation-4th respondent are oil marketing companies engaged in the manufacture and sale of various petroleum products. The petitioner-Association has members numbering around 375 and they include ex-servicemen, freedom fighters, widows and unemployed from all walks of the society including down trodden and backward classes. Respondents 2 to 4 Corporations are fully owned and controlled by Ministry of Petroleum and Natural Gas-1st respondent. Supply, manufacture and distribution etc. of all petroleum products are fully governed by Government of India, Ministry of Petroleum and Natural Gas (hereinafter referred to as MOP and NG) under its various guidelines. All the actions of respondents 2 to 4 shall confirm to the guidelines of 1st respondent. Majority of the members of the petitioner-Association are very old distributors appointed long back

i.e. even prior to the incorporation of respondents 2 to 4 and are subsequently continued on the same terms and conditions except for change in the commission etc. The oil companies have not fixed the specified area of operation of any distributor during the initial days. The only restriction was on the number of connections. Accordingly, all the distributors were operating in their surrounding areas of their respective locations. 1st respondent liberalized the LPG marketing in the year 2000 and since then LPG was made available on demand without any restriction. New appointments of dealership were made in the saturated markets in the locations identified earlier under the old marketing plans. All the new distributorships locations proposed under the above marketing plans were identified much prior to the liberalization of LPG market but their appointments were made in and after 2000. The respondents-oil companies issued a supplemental marketing plan vide their proceedings Dated 14.2.2000 in compliance with the instructions of 1st respondent under its letter dated 23.6.1997 where under certain parameters for formulating the markets or areas were contemplated. The said guidelines were made applicable w.e.f. 1.3.2000. The Government of India evolved fresh policy gudelines vide its circular dated 17.9.2001 where under closure of extension counters operated by the old distributors in the locations wherever new distributors are appointed has been sought for. Further instructions/guidelines prescribing norms on the basis of number of refill sales per month at each of the distributorship i.e. at 75 percent of the ceiling limit prescribed earlier came to be issued vide proceedings dated 16.10.2001. 1st respondent vide its further circular dated 1.2.2002 clarified the said viability norms. 1st respondent advised the companies to re-structure/-redesign the existing market so that the viability are effectively and uniformly implemented. 1st respondent in its proceedings dated 29.11.2004 indicated the new policy where under no further transfer of customers shall be under taken considering the viability of the new dealership and further the corporations shall consider all their future appointments in semi-urban and rural areas i.e. unexplored areas instead of overcrowding saturated markets. The oil companies have arrived at a decision in their meeting on 17.12.2004 to continue transfer of customers based on exclusive area of operation. According to the petitioner-Association, the decision arrived at by the oil companies is contrary to the new policy guidelines issued by the 1st respondent. For better understanding of the grievance of the petitioner-Association, I deem it appropriate to refer paras 25 and 26 of the writ affidavit filed in support of

W.P.No.14202 of 2005 and they read as under:

> " 25. I respectfully submit that the Oil companies at no point of time considered the need for uniformly specifying the areas of operation or restructuring the market to suit the 1st respondent's instructions except restricting the areas arbitrarily when the license agreements of the individual dealers were renewed. No uniform guidelines were formulated by the companies on the contrary they continued to appoint new distributors within the saturated areas on the basis of their old/obsolete marketing plans.
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> 26. Without prejudice to the above, I submit that even assuming that any area is specified under a particular marketing plan same cannot be interpreted to frustrate the subsequent policy guidelines of the 1st respondent. I submit that all the activities of the respondent oil companies either under their marketing plans or other wise shall confirm to the relevant policy guidelines of the 1st respondent applicable/issued from time to time. Therefore, the decision of the respondent oil companies vide their minutes dated 17th December, 2004 in so far as insisting for transfer of consumers on the ground "distributors appointed under the Govt. approved marketing plan based on exclusive area of operation would continue" is illegal arbitrary and hence this writ petition."

5. Respondents 2 and 3 filed counter affidavit. The sum and substance of the counter affidavit is :

The distributorship agreements were executed by the four oil companies with individual distributors duly specifying the location/area of operation. In cases where the distributorships were commissioned for specific locations, the area of operation of such distributorships was the municipal/town/panchayat limits of the specified locations. Further the agreements also provide for alteration of trading area at the sole discretion of the Corporation. Therefore, under the distributorship agreements the area of operation is not sacrosanct and it is for the Corporation to decide and alter the same depending upon the exigencies and circumstances. Therefore, the ceiling limits fixed on refill sales depending upon the type and class of the market were reviewed and revised from time to time in order to improve the viability and

working of existing LPG distributorship. The emphasis was on ensuring improved customer service and distributor infrastructure for reaching the viability level during the regulated regime. Opening of new distributors was controlled upto 1999 in view of certain constraints like product availability and limited infrastructure. However, the concept of ceiling limits lost its relevance consequent to opening of a large number of new distributorships and the free release of LPG connections on demand in all the markets through out the country, in the interest of customers at large. The MOP & NG, Government of India directed the Oil companies to carry out restructuring of markets on the basis of viability norms of each market instead of the earlier ceiling limit. The viability limit of a distributor continues to be fixed at 50 percent of the ceiling limit of the market. The concept of 15 KMs radius as an area of operation was introduced for the locations classified as rural and urban under the marketing plan of 1996-1998 onwards and was implemented for the distributorship commissioned after 1.3.2000. The public sector oil companies are bound to implement and give effect to the guidelines and norms prescribed by the MOP & NG, Government of India with regard to restructuring of LPG market in the light of the changed scenario. The public sector oil companies effected transfer of customers from the existing distributors keeping in view their viability as required by the guidelines. No customer transfer was effected from a distributor operating below 25 % of the ceiling limit within the prescribed trading area. The area of operation of distributorship commissioned after 1.3.2000 has been extended to 15 KM radius from the location. The oil companies are only implementing the circulars and norms of Government of India issued from time to time. Paras 9 and 10 of the counter affidavit read as follows:

" 9. It is absolutely incorrect that the Public Sector Oil Companies are affording preferential treatment to a category of Distributors. The Oil companies are only implementing the circulars and norms of the Government of India, issued from time to time, and cannot therefore be accused of preferential treatment or partisan attitude. It is not correct to state that the oil Companies are interpreting the circulars issued by the Government of India differently. The minutes of the Oil Industry Meeting held on 17.12.2004 endorsed by the representatives of all the Oil Companies clearly indicate the common understanding of the Public Sector Oil Companies in respect of the Circular dated 29.11.2004 issued by Government of India and the allegation of the petitioner in this regard in para 21 of the writ affidavit is therefore incorrect.

10. With regard to para 22 of the writ affidavit, I submit that it is not correct on the part of the petitioner-Association to state that the Public Sector Oil Companies no longer have the power to control or restructure the market after the issuance of the Circular dated 29.11.2004 by Govt. of India. Even as per the terms of the Distributorship Agreements, the right to control the area of operation of the Distributors is vested with the concerned Oil company and the petitioner Association cannot seek to place fetters on the contractual right created by the Distributorship Agreements on the basis of the Circulars issued by Govt. of India. It is also relevant to submit that the Hindustan Petroleum Corporation Limited is not supporting the petitioners in W.P.Nos.10338, 9791, 10334 of 2005 and batch which are writ petitions filed by newly appointed distributors of the Indian Oil Corporation Limited seeking transfer of customers from the existing distributors of the Hindustan Petroleum Corporation Limited. The Hindustan Petroleum Corporation Limited has filed counter affidavits in the said writ petitions denying the continuance of extension counters by its Distributors in the exclusive area of operation of the new distributors, thereby disclaiming responsibility/liability for effecting transfer of customers to such new distributors. It is therefore incorrect on the part of the petitioner Association to allege that the oil companies are also insisting for transfer of customers forthwith. In any event, under the Distributorship Agreements and the relevant Ministry guidelines, the Oil Companies reserve the right to alter or modify the area of operation and the customer base of individual distributors, which cannot be sought to be abridged by the petitioner-Association."

6. Heard learned counsel appearing for the parties.

7. Learned counsel appearing for the Association submits that the minutes of the meeting of the Oil Companies on 17.12.2004 are beyond the scope of the guidelines issued by Ministry of MOP & NG and therefore the said minutes are to be declared as arbitrary and illegal. He further submits that transfer of customers from one distributor to another distributor has been brought to a close by MOP & NG under circular dated 29.11.2004 and therefore any resolution passed by the Oil companies contrary to the said circular is to be declared as ineffective. In support of his submissions he refers the circulars dated 1.2.2002 and 29.11.2004.

8. Sri.N.Subba Reddy, learned senior counsel appearing for the newly commissioned distributors submits that the issue involved in these batch of writ petitions is no more resintergra in view of the judgment rendered by this court in W.P.No.1618 of 2005 dated 11.4.2005 (YEMUNA INDANE v. UNION OF INDIA) and W.A.Nos.1416 and 1417 of 2003 dated 1.9.2003 (SEETHARAMA GAS AND GENERAL TRADERS v. HINDUSTAN PETROLEUM CORPORATION LIMITED). He would further contend that as soon as new distributor has been appointed for a specified trading area, the established distributor has to close his extension counter and transfer the customers to the newly commissioned distributor. In elaborating his arguments he would contend that the decision taken by Oil companies in their meeting held on 17.12.2004 is in consonance with the policy of transfer of MOP & NG vide its letter dated 29.11.2004.

9. The dispute in these batch of writ petitions is between the newly commissioned distributors and established distributors of LPG. Undisputedly, the established distributors have to close their extension counters as soon as the Oil companies appoint newly commissioned distributor for the specified area vide circular of the 1st respondent dated 16.10.2001. The issue involved in these batch of writ petitions is squarely covered by the judgment of this court in W.P.No.1618 of 2005 dated 11.5.2005. Para 13 of the judgment needs to be noted and it reads as under:

" 13. But in respect of common area of operation, the viability limit for a distributor in a given market need to be fixed at 75% of the present ceiling limit prescribed for the different markets as the benchmark for the viability of a distributorship. So, the ceiling limits prescribed by the Government of India were applicable only in case where different distributors of different oil companies are operating in a common area. In such circumstances, question of transferring of a customer from one oil company to another oil company does not arise. Even the 6th respondent who is relying upon the first respondent's policy guidelines issued vide letter dated 16.10.2001 made it clear that the transferring of LPG connections where extension counter of an old distributor is operating in the area of a newly commissioned distributorship may be effected as per the directions of the Ministry issued vide letter dated 17.9.2001. As per the letter dated 17.9.2001, an advice was given to the oil companies to look into the matter personally and ensure that all extension counters which are operating

in the trading areas of newly commissioned LPG distributorships must be closed down immediately irrespective of the fact that same have been opened with the concurrence of the Management of concerned OMCs or otherwise. After closing down the extension counters, customers served through these counters be transferred immediately to newly commissioned distributorships of the respective areas. Therefore, 6th respondent cannot be permitted to operate an extension counter at Inkollu after commission of the distributorship of the petitioner. As a matter of fact, the third respondent addressed a letter to the second respondent to advice 6th respondent to stop supply of L.P.G. Gas in the trading area of Inkollu distributor and transfer the L.P.G. customers to the petitioner at Inkollu."

It is the contention of the established distributors that their distributorship is with reference to the location and not with reference to the trading area. Whereas it is the contention of the newly commenced distributors that as soon as they are appointed as distributors for specified trading area, the established distributor has to close their extension counters and transfer the customers of that trading area to them. There seem to be no much controversy with regard to the aspect of closure of the extension counters by the established distributors as soon as the newly commissioned distributors are appointed for that area. It is the grievance of the established distributors that the decision taken by the Oil companies on 17.12.2004 is not in consonance with the policy indicated by MOP and NG in the circular dated 29.11.2004. I deem it appropriate to refer the circular dated 29.11.2004 and it reads as follows:

" 1. I am directed to refer to this Ministry letter of given number dated 17, September, 2001 and 16, October 2001 laying down the policy on transfer of customers from established LPG distributors to newly commissioned distributors of oil marketing companies (OMCs). The policy was formulated based on the representatiosn received from the latter category the grounds of non-viability in the initial years. This was a direct outcome of OMCs crowding the urban/rural markets, almost saturating them in the process instead of exploring new and less covered areas.

2. Now, the Government taking steps to bring down the subsidy element on domestic LPG, the stage is ripe for OMCs to go into semi urban and rural areas and set up new distributorships there with a view to propagating the use of domestic LPG with its attendant benefits. While the viability criteria would warrant a minimum customer base, this may require a larger geographical area in semi urban and rural markets compared to urban markets being focused on by the

> OMCs now. A cost element for covering transportation charges involved in the longer distances may be worked out by the OMCs and indicated and collected separately from customers in these areas at actuals.
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> 3. In view of above, you are requested to draw up marketing plan immediately in tandem with other industry members for coverage of semi urban and rural areas for setting up LPG distributorships. In as much as the work relating to the transfer of customers from established to new distributorships have been completed. It may now be brought to a close. OMCs may now expand the coverage to new areas rather than redistribute the existing areas."

10. What is brought down to close is transfer of customers from established distributors to newly commissioned distributors in case of common areas of operations. The oil companies in its meeting dated 17-12-2004 considered the policy of the MOP & NG and adopted the same. With regard to transfer of customers based on exclusive area of operation, the oil companies have taken a decision that the transfer of customers would continue. It cannot be said that the decision of the oil companies is contrary to the policy of the central Government contained in their letter-dated 29.11.2004. The dealership agreements of the newly commissioned distributors specify the exclusive trading area and whereas the dealership agreements of the established distributors indicate only locations. What is brought to close by MOP and NG is with regard to transfer of customers from established distributor to newly commissioned distributor with regard to common areas of trading. Therefore, it cannot be said that the decision taken by the oil companies on 17.12.2004 with regard to continuance of transfer of customer based on exclusive area of trading is contrary to the policy of 1st respondent.

12. In the result, Writ Petition Nos. 9787, 9791, 9792, 9812, 10326, 10327, 10334, 10338, 13683, 1599, 16002, 16646, 16860, 10708, 17388 of 2005 are disposed of directing the respective oil companies to take necessary steps to prevent the established distributors from operating their business activities of supplying L.P.G. within the exclusive areas of operations of the newly commissioned distributors and W.P.Nos.14202, 17204, 17194 and 18690 of 2005 are dismissed. No costs.

Dated: 23-01-2006. (B.Seshasayana Reddy, J)

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DISPOSED OF ON 23-01-2006.